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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hantech Corporation

Serial No. 78266924

Kit M. Stetina of Stetina Brunda Garred & Brucker for Hantech Corporation.

Linda E. Blohm, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Hairston, Walters and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Hantech Corporation (applicant) to register the mark shown below (as amended) for goods which were ultimately amended to: "Water treatment equipment components, namely sediment cartridges, carbon block cartridges, granular activated carbon filters, membrane housings, membranes, pressure gauges, filter housings, pressure vessels, reverse osmosis tanks, and reverse osmosis systems" in

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International Class 11.¹

Liquatec

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the registered mark LIQUITECH (in typed form) for "liquid purification units, namely water purification systems" in International class 11 as to be likely to cause confusion.²

¹ Application Serial No. 78266924 was filed on June 25, 2003, originally based on both Sections 1(a) and 1(b) of the Trademark Act and alleging first use on May 1, 2003 and first use in commerce on June 27, 2003, a date subsequent to the filing date of the application. In the first Office action, the examining attorney required that applicant limit the application to one filing basis and, without noting the unacceptable date of first use in commerce, advised that if applicant chose to rely on Section 1(a), applicant would need to submit a specimen together with a verified statement that the specimen was in use in commerce as of the filing date of the application. Applicant amended the application to rely solely on Section 1(a) and submitted a specimen of use along with an improperly worded declaration stating that "the mark," rather than the specimen, was in use in commerce as of the filing date. The examining attorney noted this deficiency for the first time in her appeal brief. In response, applicant stated in its reply brief that "Upon a favorable decision by this Board, Appellant shall provide a properly worded declaration." In the interest of administrative convenience, and because these are minor procedural matters that have no impact on the refusal herein, the application will not be remanded to the examining attorney for resolution of these issues at this time. However, if applicant ultimately prevails in this case, the application will be remanded to the examining attorney to require that applicant either amend the basis for filing to Section 1(b) (intent-to-use), or, if accurate, amend the date of first use in commerce to a date prior to the application filing date and submit a properly worded affidavit or declaration in support of the specimen.

² Registration No. 2770308, issued September 30, 2003 to Liquitech, Inc. The examining attorney also initially refused registration under Section 2(d) on the basis of two additional registrations, Registration Nos. 0991310 and 1666538. At the same time, the examining attorney

When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue, including the similarities of the marks and the similarities of the goods. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

As to the marks, the examining attorney argues that the marks are similar in that they are essentially phonetic equivalents that could be pronounced the same. Applicant, on the other hand, contends that the marks are different in sound, appearance and commercial impression. In particular, applicant notes the differences in spelling and argues that the marks are not phonetic equivalents because, according to applicant, "the 'A' in LIQUATEC cannot be pronounced in a similar manner to the 'I' in LIQUITECH." (Reply Brief, p. 3.) Applicant contends that these differences in the marks when properly considered are not insignificant but instead would have a substantial impact on purchasers.

referenced application Serial No. 78088995 (filed by Liquitech, Inc.) as a potential cite against the present application. The examining attorney withdrew the refusal as to the additional registrations in her final Office action and, as she notes in her brief, effectively withdrew the potential cite by not maintaining the reference in that action.

It is well settled that marks must be compared in their entirety, not dissected into component parts and the minute details of each part compared with other parts. *Genesco Inc. v. Martz*, 66 USPQ2d 1260 (TTAB 2003). When marks are closely examined on a side-by-side basis, differences in the marks, no matter how insignificant, are easy to discern. However, a side-by-side comparison is not the test. In the normal marketing environment, purchasers do not usually have an opportunity to examine marks in detail and normally retain a general rather than a specific impression of the many trademarks encountered. In *re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988). Thus, it is the overall impression of the marks derived from viewing the marks in their entirety that is controlling. See *Dan Robbins & Associates, Inc. v. Questor Corporation*, 599 F.2d 1009, 202 USPQ 100 (CCPA 1979).

When applicant's mark LIQUATEC (stylized) and registrant's mark LIQUITECH are compared in their entirety, and as they would be encountered in the marketplace, we find that the overall similarities in the marks far outweigh their differences.

The marks are similar, if not virtually indistinguishable, in sound, differing only by a single vowel, the "I" in applicant's mark and the "A" in registrant's mark. These two vowels sound similar when the marks are spoken, and if they are

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not clearly and distinctly pronounced, the difference may not be noticed at all.

As the examining attorney points out, similarity in sound alone has been held to support a finding of likelihood of confusion. See *Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968). Nevertheless, these marks are also similar in appearance. The marks have the same structure, both consisting of two terms combined to form a single word and both beginning with visually similar terms, "LIQUA" and "LIQUI," and ending with visually similar terms, "TECH" and "TEC." Although applicant's mark is stylized, the stylization is minor and unlikely to be noted or remembered at all, let alone sufficient to distinguish one mark from the other. Furthermore, the mark LIQUITECH, being registered in typed form, could reasonably be displayed in a form similar to applicant's mark thereby further enhancing the visual similarity of the two marks. See *Phillips Petroleum Co. v. C. J. Webb Inc.*, 442 F.2d 1376, 170 USPQ 35 (CCPA 1971); and *INB National Bank v. Metrohost Inc.*, 22 USPQ2d 1585 (TTAB 1992).

Any slight differences in sound and appearance between the two marks become even less significant when we consider that the marks, when viewed in the context of the respective goods, have identical connotations and create identical overall commercial impressions. The terms, LIQUITEC and LIQUATECH, clearly have the

same suggestive meaning in relation to the respective water treatment and purification products.³

Thus, while we have considered the differences in the marks, we find that such differences have a minimal impact on the sound and appearance of the marks and no affect on the meaning or the commercial impressions the marks as a whole convey.

We turn then to the goods. The examining attorney argues that the respective goods are used in conjunction with each other and relies on printouts from third-party websites to support that contention. In addition, the examining attorney contends that as neither applicant's nor registrant's identification of goods contains any limitations on the channels of trade or classes of purchasers, the respective channels of trade and classes of purchasers must be presumed to be the same.

It is well settled that goods need not be similar or competitive in nature to support a finding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that

³ We take judicial notice of the definitions of "tec" and "tech" as abbreviations for "technology" in *Webster's Third New International Dictionary of the English Language* (1993).

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they emanate from or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Registrant's goods are "water purification systems." Applicant's goods are identified as "water treatment equipment components, namely sediment cartridges, carbon block cartridges, granular activated carbon filters, membrane housings, membranes, pressure gauges, filter housings, pressure vessels, reverse osmosis tanks, and reverse osmosis systems." The goods on their face are very closely related. Water purification is a form of water treatment. Applicant's water treatment components would comprise all or part of a water purification system. Thus, the respective goods have overlapping, if not interchangeable, functions and purposes.

Moreover, the printouts of third-party websites submitted by the examining attorney show that water purification systems include components such as those identified in the application. For example, *www.greatestherbsonearth.com* offers "water treatment system supplies" that include "water purification" products such as sediment cartridges, carbon filters, and reverse osmosis membranes and units; *www.spectrapure.com* offers carbon block filters, granulated activated carbon filters and sediment filters for "water purification systems"; *www.inspiredliving.com* offers water purifiers with replaceable carbon block cartridges; and *www.thstore.com* offers "water purification" parts and components

including sediment cartridges, carbon block cartridges and granulated activated carbon cartridges.

Applicant, however, maintains that applicant's goods are never used in conjunction with the goods of registrant and specifically that registrant's system in fact does not use the component parts as listed in applicant's identification of goods. To support this contention, applicant relies on printouts from registrant's website and a declaration of its sales manager, Rodney Carmer, who states: "The water purification system sold by [registrant] do not [sic] consist of any of the goods recited in [the subject] application." Further, according to applicant, registrant's goods are "related to ionization processing" as distinguished from applicant's goods that are "related to filter based processing." Applicant also contends that the respective goods are sold in different markets and serve different purposes, that is, registrant's system is directed to commercial and institutional facilities, such as hospitals, and is used to treat legionella bacteria whereas applicant's water treatment units are marketed to families and sold to homes for drinking water.⁴

⁴ The examining attorney has objected to exhibits A, C, D and E which were attached to applicant's appeal brief. Exhibit C consists of registrant's website materials which were submitted by applicant prior to appeal and are therefore properly of record. However, the objection to Exhibits A, D and E is well taken. Exhibits A and D consist of additional portions of registrant's website and exhibit E consists of a second declaration of applicant's sales manager. Neither of these exhibits was made of record prior to appeal. Applicant's claim that the additional evidence "merely clarif[ies] the evidence already made

As our primary reviewing court has often stated, the question of likelihood of confusion is determined on the basis of the identification of goods set forth in the application and registration, without limitations or restrictions as to the actual nature of the goods, their channels of trade and/or classes of purchasers that are not reflected therein. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 1464, 18 USPQ2d 1889 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783 (Fed. Cir. 1990); and *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983). Applicant has read impermissible limitations into the application and registration. There are no limitations on the types of components used in registrant's water purification system, or the function or purpose of registrant's system in registrant's identification of goods.⁵ Thus, whether water treatment components such as applicant's are in fact part of registrant's water purification system, or whether registrant in fact uses the same type of filtration system as applicant is immaterial.

of record" is unavailing. The evidence was filed after the record in this case was closed and is therefore untimely. See Trademark Rule 2.142(d). We add, however, that even if we were to consider this evidence it would not be persuasive of a different result in this case.

⁵ We note that Mr. Carmer does not state that water purification systems in general would not consist of any of the goods identified in the application but only that registrant's particular system does not include such goods.

Similarly, there are no limitations on the channels of trade in the identifications of goods in either the application or registration or on the classes of purchasers. Nor do we find anything inherent in the nature of registrant's goods which would limit those goods to institutional or commercial purchasers. Thus, we must presume that the channels of trade for the respective goods are the same and further that the goods are offered to all potential purchasers, including ordinary purchasers. The third-party website materials show that, indeed, ordinary consumers such as homeowners, are among the intended customers for water purification systems and components. For example, *www.greatestherbsonearth.com* states: "Important: Always consult your family health practitioner before starting, changing or altering your personal health regimen; and *www.inspiredliving.com* states: "Water Wizard Purifiers combine the most powerful water purifying technology available to bring your family the safest ...water imaginable."

Applicant argues that the purchasers of the respective goods are sophisticated and would exercise care in their purchasing decisions. Pointing to the printouts from third-party websites submitted by the examining attorney, applicant contends that "component parts for water purification systems are always ordered with respective part numbers" (Request for Recon., p. 4, emphasis omitted) and that purchasers would not order a component

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until they have fully investigated and identified the source of the goods, and ensured that the component part to be ordered matches their system.

While purchasers may be careful about the water purification systems or components they select, they are not necessarily sophisticated or experienced in these goods. In any event, even sophisticated and careful purchasers of goods can be confused as to source where, as here, the marks are highly similar and the goods are very closely related. See *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers...are not infallible.").

Decision: The refusal to register is affirmed. As we stated earlier in this decision, if applicant should ultimately prevail in any appeal of this case, the application will be remanded to the examining attorney to require that applicant either amend the filing basis to Section 1(b) (intent-to-use), or, if accurate, amend the date of first use in commerce to a date prior to the application filing date and submit properly worded affidavit or declaration in support of the specimen.